REMARKS

Initially, Applicant expresses appreciation to the Examiner for the courtesies extended in the recent telephonic discussion regarding this case. The amendments and remarks presented herein are consistent with those discussed. Accordingly, entry of this amendment and reconsideration of the pending claims is respectfully requested.

The Office Action, mailed February 12, 2007, considered and rejected 1-36. Claim 36 was objected to for minor informalities. Claims 23 and 36 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claim 1 was provisionally rejected based on the non-statutory, obviousness-type double patenting doctrine in view of claim 1 of co-pending U.S. Patent Application Serial No. 10/880,051. Claims 1-34 and 36 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Bruckert* (U.S. Patent No. 5,430,761). Claim 35 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bruckert* in view of *Ala-Laurila* (U.S. Patent No. 6,587,680).[1]

By this paper, claims 1, 2, 10, 12-18, 20-29, 33, 34 and 36 have been amended, claim 37 added, and claims 11 and 19 cancelled.[2] Accordingly, following this paper, claims 1-10, 12-18 and 20-37 are pending, of which claims 1, 23, 24 and 36 are the only independent claims at issue.

1. Claim Objections

As noted in the Office Action (*see, e.g.*, p. 2), Claim 36 was objected to for minor informalities relating to the limitations of "another resource" and "the associations." As reflected above, claim 36 has been amended and "another resource" and "the associations" have been removed from the claim, and the claim clarified. Accordingly, Applicant respectfully submits that this objection is overcome and now moot.

2. Rejections under 35 U.S.C. § 101

As noted previously, and as further detailed on pages 2 and 3 of the Office Action, claims 23 and 36 were rejected under 35 U.S.C. § 101 as being drawn to non-statutory subject matter.

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[1] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

[2] Support for the various claim amendments can be found throughout Applicant's original application, including at least the disclosure on pp. 3-7, 10, 11 and 16-20 of the originally filed application, and in the original claims and figures.

Applicant respectfully submits that in view of the claim amendments above, this rejection is overcome and withdrawal is respectfully requested.

Specifically, the Office Action notes that the claimed subject matter of claim 23, which recited a "computer readable medium" could be read to include only a data signal, which the Office considers to be non-statutory. Applicant notes that Applicant's original specification describes two different types of computer readable media, namely storage media and communication media. (*See* pp. 10 and 11). In this disclosure, storage media includes, by way of example only, RAM, ROM, EEPROM, flash memory, CD-ROM, DVD, and other types of volatile, nonvolatile, removable or non-removable media. In contrast, only communication media is recited to include data modulated on a carrier wave or other data signal. Accordingly, inasmuch as claim 23 has been amended to recite "computer readable *storage* media," thereby limiting the claims and excluding "communication media", Applicant submits that this rejection is overcome.

With regard to the rejection of claim 36, Applicant notes that claim 36 is generally directed to a data structure recorded on computer-readable storage media, and which includes a variety of fields. Applicant respectfully submits that such a data structure is "functional descriptive material" as defined in the M.P.E.P. Moreover, inasmuch as the data structure is recorded on computer readable storage media, it is not functional descriptive material *per se*, but is instead recorded on computer readable media such that it is structurally and functionally interrelated to the medium, and thus statutory.

In particular, M.P.E.P. § 2106.01, which describes the procedure for determining when a computer-related invention is statutory, expressly and specifically notes that data structures, as opposed to mere data (e.g., music, literary works, and a compilation or mere arrangement of data which find protection under copyright laws) are functional descriptive material. Specifically, M.P.E.P. § 2106.01 (emphasis added) indicates that:

> Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

Accordingly, the M.P.E.P. specifically defines data structures as functional descriptive material. The Office Action provides a mere conclusion, without supporting arguments, that the data claimed structure is an abstract idea and non-functional descriptive material. (Office Action, p. 3). In contrast, however, Moreover, M.P.E.P. § 2106.01 further notes that such data structures, when recorded on a computer readable medium are statutory under 35 U.S.C. § 101, and expressly states:

> When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since the use of technology permits the function of the descriptive material to be realized.

Indeed, M.P.E.P. § 2106.01 recites two cases—namely *In re Lowry* and *Warmerdam*—in which a data structure stored on a computer readable medium was expressly determined to be statutory and not an abstract idea. Indeed, in the cases listed the only data structure not considered statutory was one which was not recorded on a computer-readable medium. Accordingly, inasmuch as claim 36 recites a data structure encoded on a computer-readable storage medium, Applicant respectfully submits that the claim is an article of manufacture as described in M.P.E.P. § 2106.01. More particularly, data structures, when recorded on a computer readable medium, such as reflected in the above claims, are functionally and structurally interrelated to the computer-readable medium and are therefore concrete, tangible and useful.

3. Double Patenting

Claim 1 was provisionally rejected on the ground of non-statutory obviousness-type double patenting in view of claim 1 of co-pending U.S. Patent Application Serial No. 10/880,051 (the '051 application) which recites, in its entirety:

> In a environment in which signal strengths data can be detected, a method comprising:
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> obtaining signal strength data of a first device with respect to signals received from at least one base station; and
>
> computing an approximate distance from the first network device to a resource based on the signal strength data.

Particularly in view of the amendments to claim 1 above, Applicant submits that this rejection is also overcome. For example, claim 1 of the '051 application fails to disclose or suggest any method in which signal strengths are obtained from multiple devices, compared between different network devices, or in which the comparison of signals strengths is used to determine whether the network devices are proximate each other so as to report the proximity to the first network device, as claimed in combination with the other claim elements. Accordingly, for at least these reasons, Applicant submits that claim 1 of the pending application is not obvious in view of claim 1 of the '051 application and, accordingly, withdrawal of the rejection is respectfully requested.

4. Rejections under 35 U.S.C. §§ 102 and 103

As reflected in the above claim listing, Applicant's claims are generally directed to methods, computer readable storage media, systems, and data structures that allow a client device to obtain information about other devices located near the client device. For instance, as recited in claim 1, for example, a method for detecting proximity of multiple resources and identifying proximate network resources to a network device includes obtaining signals strength data of signals received by a first network device from a stationary base station. Additionally signal strength data from other network resources is received with regard to the stationary base station, where the first network device and other network resources are remote from the base station. The signal strength data of the first network device is compared with the signal strength data of the network resources and it is determined that the first network device is proximate one or more other network resources based on the signal strength data of the various resources. The identity of the network resources determined to be proximate the first network device is then provided to the first network device.

Independent claim 23 recites a computer-readable storage media having instructions stored thereon for performing a method corresponding to the method of claim 1. Claim 24 recites a system that includes a client device having an output mechanism for reporting data obtained in a manner generally consistent with that of claim 1. Claim 36 recites a data structure storing network resource information, base station information, and signal strength data useful for obtaining the proximity information reported in claim 1.

While *Bruckert* generally relates to wireless systems in which signal strength data is used to measure signal quality and relative proximity of a mobile device to a base station, Applicant respectfully submits that it fails to disclose or suggest each and every limitation of the pending claims. For example, among other things, *Bruckert* fails to disclose or suggest a method, system, computer-readable media, or data structure in which proximity information of one network device remote to the base stations is reported to the first network device which is also remote from the base stations, as claimed in combination with the other claim elements.

In particular, *Bruckert* discloses a system which allows a cellular communication system configured to reduce interference through offset frequency partitioning in which it is determined which of a plurality of base transceiver stations (BTS) is most appropriate for handling the communication for a particular mobile station (MS). (Col. 1, ll. 28-43; Col. 2, ll. 18-33). Specifically, upon activation of a MS, the MS scans a set of frequencies to search for channel identification signals transmitted from nearby BTS. (Col. 2, ll. 18-20). Upon detecting such a signal, the MS measures a signal strength or other measurement of signal quality to determine a relative proximity of the MS to the BTS. (Col. 2, ll. 20-24). After scanning all frequencies, the MS can select the BTS which provides the best signal quality to serve as its active BTS, locks into the BTS, and monitors the channel for the BTS for incoming calls or sends an outgoing call request over the channel for the BTS. (Col. 2, ll. 24-33). While locked into the active BTS, the MS also monitors and identifies primary channels of other nearby BTS, and can thus change to a different BTS when the signal quality dictates a change should be made. (Col. 2, ll. 34-46).

In some cases, the multiple MS may use a single channel. (Col. 2, ll. 65-68). In such cases the system must maintain a minimum separation distance between simultaneous channel users, so as to reduce mutual interference and maintain interference below a threshold level. (Col. 3, ll. 1-13). To maintain interference below the threshold level, reuse patterns are developed to assign frequencies within the cellular system and avoid assignment of adjacent channels to the same or adjacent cells whose radio coverage is each provided by a BTS. (Col. 1, ll. 28-29; Col. 3, ll. 26-62).

Accordingly, *Bruckert* discloses a system in which signal strength is used by a mobile device to connect to a BTS and in which cells are assigned particular frequencies to maintain a tolerable level of frequency. *Bruckert* fails to disclose, however, any use of a signal strength to determine what mobile devices are located close to each other, or that any identification of a remote network device is provided to a different remote network device. Indeed, the disclosure in *Bruckert* appears limited to exchanging information about a mobile device and a base station with only the same mobile device, so that information about a different mobile device is never sent to a different mobile device. Accordingly, the remote network devices in *Bruckert* fail to ever receive the identity of any other mobile device, let alone a mobile device determined to be proximate that mobile device based on compared signal strengths, as recited in combination with the other claim elements.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney by telephone at (801) 533-9800.

Dated this 11th day of May, 2007.

Respectfully submitted,

RICK D. NYDEGGER
Registration No. 28,651
JENS C. JENKINS
Registration No. 44,803
COLBY C. NUTTALL
Registration No. 58,146
Attorneys for Applicant
Customer No. 047973

RDN:JCJ:CCN:gd
GD0000001727V001